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FR-4915-01-P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36306]

Brookhaven Rail Partners, LLC, Related Infrastructure, LLC, BRX Transportation Holdings, LLC, and BRX Acquisition Sub, Inc.—Control Exemption—Pioneer Railcorp, et al.

Brookhaven Rail Partners, LLC (Brookhaven), Related Infrastructure, LLC (Related Infrastructure), BRX Transportation Holdings, LLC (BRX Transportation), and BRX Acquisition Sub, Inc. (BRX Acquisition) (collectively, Applicants), filed a verified notice of exemption under 49 C.F.R. § 1180.2(d)(2) to acquire control of Pioneer Railcorp (Pioneer), a noncarrier holding company that controls 15 Class III railroad subsidiaries: Alabama & Florida Railway Co., Inc.; Alabama Railroad Co., Inc.; Decatur Junction Railway Co.; Elkhart & Western Railroad Co.; Fort Smith Railroad Co.; The Garden City Western Railway, Inc.; Georgia Southern Railway Co.; Gettysburg & Northern Railroad Co.; Indiana Southwestern Railway Co.; Kendallville Terminal Railway Co.; Keokuk Junction Railway Co.; Michigan Southern Railroad Company; Mississippi Central Railroad Co.; Pioneer Industrial Railway Co.; and Vandalia Railroad Company (collectively, Pioneer Railroads).

According to the verified notice, Applicants intend to acquire 100% of the equity interests of Pioneer pursuant to an Agreement and Plan of Merger dated May 16, 2019.¹

As a result of the proposed transaction, BRX Acquisition will merge with and into

¹ A redacted version of the agreement was filed with the notice of exemption. An unredacted version was filed concurrently under seal, along with Applicants' motion for protective order under 49 C.F.R. § 1104.14(b). The motion for protective order will be addressed in a separate decision.

Pioneer, with Pioneer the surviving corporation. Pioneer will become a wholly owned subsidiary of BRX Transportation, and, indirectly, Brookhaven and Related Infrastructure will thereby acquire control of the Pioneer Railroads.²

The verified notice states that the parties contemplate that the transaction will be consummated during the third quarter of 2019. The earliest the transaction may be consummated is July 7, 2019, the effective date of the exemption (30 days after the verified notice was filed).

The verified notice states that: (i) Applicants do not own or control any rail line that connect with any of the Pioneer Railroads; (ii) the proposed transaction is not part of a series of anticipated transactions that would connect any railroad owned or controlled by Applicants with the Pioneer Railroads or connect any of the Pioneer Railroads with one another; and (iii) the proposed transaction does not involve a Class I carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. § 11323. See 49 C.F.R. § 1180.2(d)(2).

Under 49 U.S.C. § 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. However, 49 U.S.C. § 11326(c) does not provide for labor protection for transactions under 49 U.S.C. §§ 11324 and 11325 that involve only Class III rail carriers. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. § 10502(d) may be

² The verified notice states that Brookhaven and Related Infrastructure are separate unaffiliated entities, except for their joint ownership of BRX Transportation, which is the parent of BRX Acquisition.

filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions to stay must be filed no later than June 28, 2019 (at least seven days before the exemption becomes effective).

All pleadings, referring to Docket No. FD 36306, must be filed with the Surface Transportation Board via e-filing or in writing addressed to 395 E Street, S.W., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on Applicants' representative, David F. Rifkind, Stinson LLP, 1775 Pennsylvania Avenue, N.W., Suite 800, Washington, DC 20006.

Board decisions and notices are available at www.stb.gov.

Decided: June 18, 2019.

By the Board, Allison C. Davis, Director, Office of Proceedings.